

REMARKS

Claims 1-28 are pending. Of those, claims 1, 10, 18, 27 and 28 are independent.

§ 112 Rejection

On page 2 of the Office Action, claims 7, 10-28 are rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 7, the Examiner regards the phrase “said copy command code” as lacking sufficient antecedent basis. Applicant appreciates the Examiner’s assistance in identifying this typographical error. The intent behind reciting “said copy command code” was to refer to the phrase “third party copy command” recited in the preamble of claim 1 (from which claim 7 depends). Accordingly, this typographical error has been corrected by this reply to read --third party copy command--, a marked-up version of the correction being: third party copy command code.

Regarding claims 10 and 18, the Examiner regards the phrases “said destination” and “said source” as lacking sufficient antecedent basis. Applicant appreciates the Examiner’s assistance in identifying these typographical error. The intent behind reciting “said destination” and “said source” was to refer to the phrases “a destination device external to said host” and “a source device external to said host,” respectively, recited in the preambles of claims 10 and 18. Accordingly, these typographical errors have been corrected by this reply to read --said destination device-- and --said source device--, a marked-up version of the correction being: said destination device, said desired data and said source device.

Regarding claims 16, 24, 27 and 28, the Examiner regards the phrase “a single a copy” as containing a typographical error, and suggests the following correction: a single

[[a]] copy. Applicant appreciates the Examiner's assistance in identifying these typographical errors and has adopted the Examiner's suggested correction in each of claims 16, 24, 27 and 28.

In view of the foregoing, withdrawal of the §112, second paragraph, rejection is requested.

Each of the above-identified claim changes merely corrects typographical errors that would have been recognized as such by one of ordinary skill in the art. Thus, each is considered to be non-narrowing, i.e., none represents an amendment made to avoid reading upon prior art.

§ 103 Rejections

Beginning on page 3 of the Office Action, claims 1-11, 17-19, 25 and 26 are rejected under 35 U.S.C. § 103(a) as being obvious over US Patent No. 5,463,772 to Thomson et al. (the '772 patent) in view of Celestra Architecture for Serverless Backups (the "Celestra ref."). Applicants traverse.

Applicants agree with the Examiner that the '772 patent does not teach that the copy command is a third party copy command nor that the copy device is a third party copy device. It will be assumed for the sake of argument that the correspondence between the elements of claim 1 and the '772 patent are reasonable.

Applicants also are willing to assume for the sake of argument that the Celestra ref. discloses a third party copy engine in a form of the Celestra copy module. Beyond that however, Applicants disagree with the Examiner's interpretation of the Celestra ref.

The Celestra ref. assumes that there is one and only one third party copy engine, namely the Celestra copy module, which amounts to no more than third party copy engine 112 of Applicants' admitted Background Art Fig. 1. It will be further assumed for the sake of

argument that a Celestra copy command includes data that identifies one or more destination devices (referred to by the Celestra ref. as “sync extents” and that are provided on a listing) and one or more sources (referred to by the Celestra ref. as “source extents” and that also are provided on a listing) of data to the copy. But nowhere does the Celestra ref. indicate the Celestra copy command includes data identifying one from among a plurality of the third party copy engines that is to carry out the third party copy process. Again, this is because there is no need to indicate an identity of a third party copy engine within a third party copy command in a circumstance in which there is one and only one third party copy engine provided.

A distinction of independent claim 1 over the Celestra ref., and therefore over the ‘772 patent as well, is the data entity portion that identifies a third party copy device to carry out the copy process. Claims 2-9 and 25 depend from claim 1, respectively, and include at least the same distinction as claim 1.

Independent claims 10 and 18 recite features similar to claim 1 and similarly distinguish over the Celestra ref. and the ‘772 patent, respectively. Claims 11, 17, 19, 25 and 26 depend at least indirectly from claims 10 and 18 and include at least the same distinctions as claims 10 and 18, respectively.

In view of the foregoing discussion, the §103 rejection of claims 1-11, 17-19, 25 and 26 as being obvious over the ‘772 patent as modified according to the Celestra ref. is improper and Applicants request that the rejection be withdrawn.

Beginning on page 5 of the Office Action, claims 16 and 24 are rejected under 35 U.S.C. § 103(a) as being obvious over the ‘772 patent in view of the Celestra ref. as applied to claims 10, and 18 and further in view of US Patent No. 5,212,784 to Sparks (the ‘784 patent). Applicants traverse.

Claims 16 and 24 depend from claims 10 and 18, respectively, and as such exhibit the distinctions of claims 10 and 18 (noted above), respectively, over the combination of the '772 patent and the Celestra ref. The '784 patent fails to make up for the shortcomings of the combination of the '772 patent and the Celestra ref.

Thus, the §103(a) rejection of claims 16 and 24 as being obvious over the combination of the '784 patent and the Celestra ref. as further modified according to the '784 patent is improper. Withdrawal of the rejection is requested.

Allowable Subject Matter

Applicants acknowledge with appreciation the Examiner's indication on page 6 of the Office Action that: claims 27 and 28 would be allowable if rewritten to overcome the rejections under 35 U.S.C. §112, second paragraph; and claims 12-15 and 20-23 would be allowable if rewritten to overcome the rejections under 35 U.S.C. §112, second paragraph and to include all of the limitations of the base claim and any intervening claims.

CONCLUSION

The issues in the case are considered to be resolved. Accordingly, Applicants again request a Notice of Allowability.

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Person to Contact

In the event that any matters remain at issue in the application, the Examiners are invited to contact the undersigned at (703) 668-8000 in the Northern Virginia area, for the purpose of a telephonic interview.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No.

08-2025 for any additional fees under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,
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